

B. Timmerman



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** C. Lawrence Construction Company, Inc.--  
Reconsideration

**File:** B-242838.2

**Date:** March 19, 1991

Charles A. Lawrence, Jr., for the protester.  
Barbara R. Timmerman, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

General Accounting Office properly dismissed as untimely a protest filed more than 3 months after the denial of an agency-level protest on the same basic matters; the protester's continued pursuit of the matter with the agency does not toll the timeliness requirements.

### DECISION

C. Lawrence Construction Company, Inc. requests reconsideration of our February 6, 1991, decision in which we dismissed as untimely Lawrence's protest against the award of a contract to Lord and Son Construction, Inc. under invitation for bids (IFB) No. F08651-90-B-0104 issued by the Department of Air Force.

We affirm the dismissal.

In its protest, Lawrence argued that both the awardee's bid and the government's estimate were unbalanced and that the IFB did not, as required by Federal Acquisition Regulation (FAR) § 36.205(b)(3), include a certification that the price on each schedule include an approximate apportionment on all estimated direct costs, allocable indirect costs and profit. We dismissed the protest because although the contracting officer denied Lawrence's October 3 agency-level protest by letter of October 31, Lawrence did not file its protest with our Office until February 4, more than 10 working days later. 4 C.F.R. § 21.2(a)(3) (1990).

In its reconsideration request, Lawrence asserts that its protest on the issue of the certification is timely. The protester states that it raised this issue not in its initial agency-level protest, but in a subsequent protest dated

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January 7, which was denied by the agency on January 18. Lawrence asserts that its protest of this issue is timely because it was filed with our Office within 10 days of Lawrence's receipt of the agency's January 18 letter.

Under our Bid Protest Regulations, protests based on alleged improprieties in a solicitation, which are apparent prior to bid opening must be filed with the contracting agency or our Office prior to that date to be timely. 4 C.F.R. § 21.2(a)(1). Thus, Lawrence's protest that the IFB improperly failed to incorporate the certification requirement needed to be filed prior to bid opening. Since Lawrence's agency-level protest of this issue was filed on January 7, over 3 months after bid opening, its protest on this basis is untimely.

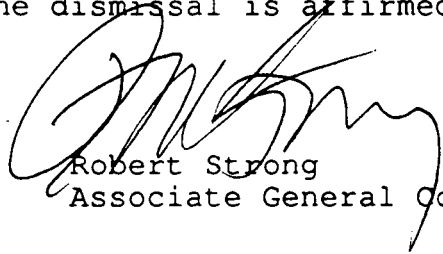
Lawrence also argues that it did not earlier file its protest with our Office because it was attempting to first resolve its protest with the agency as contemplated by FAR §§ 33.102; 33.103. The fact that Lawrence continued to pursue its protest with the agency after receipt of the October 31 denial did not toll our timeliness requirements. See Beckman Instruments, Inc.--Recon., B-239293.2, June 22, 1990, 90-1 CPD ¶ 585. Once informed of an initial adverse agency action, a protester may not delay filing a subsequent protest with our Office while it continues to pursue the protest with the agency. See Rocky Mountain Helicopters, Inc.--Recon., B-231898.2, Aug. 22, 1988, 88-2 CPD ¶ 169.

Finally, Lawrence argues that even if we find its protest untimely, we should nonetheless consider it because of the "nature of the protest" and because the agency actions here were an "illegal act." Our Regulations permit the consideration of an untimely protest if the protest raises a significant issue. 4 C.F.R. § 21.2(b). We consider a significant issue to be one where the issue raised concerns a matter of widespread interest to the procurement community, which has not been considered on the merits in a previous decision. DynCorp, B-240980.2, Oct. 17, 1990, 70 Comp. Gen. \_\_\_, 90-2 CPD ¶ 310. This exception to our timeliness rules is strictly construed and sparingly used to prevent our rules from being rendered meaningless. Id.

Lawrence's protest does not fall within this narrow exception. The resolution of the issues here concerning unbalancing have been considered many times by our Office and their resolution in this case pertains only to this solicitation and are not of

widespread interest to the procurement community. See  
Armstrong Motorcycles Ltd., B-238436; B-238436.2, June 5,  
1990, 90-2 CPD ¶ 531. Therefore, we decline to invoke the  
significant exception to our timeliness rules.

The dismissal is affirmed.



Robert Strong  
Associate General Counsel